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CLAIM FOR INJURY UNDER WORKMEN'S COMPENSATION ACT HAPPENING IN OTHER THAN THE HOME STATE OF EMPLOYER.

In Grinnell v. Wilkinson, 98 Atl. 103, decided by Supreme Court of Rhode Island, the interesting question of the application or not of the Workmen's Compensation Act by that State to an injury suffered by an employe of an employer coming under the act, in another State.

Conceding that by fair construction of the Rhode Island act it was intended to cover such an injury, the question remained whether to apply it was the giving of extra-territorial force to a State law or whether, liability being in effect contractual, the tort theory was merged and the courts of the State where the accident happened would either refuse to take jurisdiction or taking it, enforce the liability.

It is possible to suppose that employer and employe might in any employment put whatever might arise out of the employment on a contractual basis and the fact that the law of another State expresses the terms of that basis would not be giving extra-territorial force to such law. But is there any presumption of law, that it applies to any contract between employer and employe entered into in another State?

Suppose the policy of employer's State directly contemplates that its remedial system expressed in Workmen's Compensation Act includes liability of its domiciliary employer as to outside acts, and the policy of another State is not in complete harmony with that of employer's domicile, may not the other state enforce by its own courts and be entitled to have enforced by other courts, its policy? Where does true comity come in in such a case?

In each of the States having Workmen's Compensation Acts its policy is supposed to contemplate protection of employes as to accidents happening within its borders without regard to what is the domicile of employer, and if it so happen that the employe in the employ of a non-resident is himself a resident, why should his contract come under the law of the employer's State? What is there that is sacrosanct in the employer's contract that may override the law of the employe's State?

These compensation acts have been held constitutional under the police power of States. This power, however, exerts itself and exhausts itself as to the welfare of a State's citizens and of those who place themselves under the reach of that police power. If a State has a workmen's compensation law, the humanitarian and economical considerations on which it is founded are as to employments therein and not elsewhere according to an employer's residence. The act affects local industries and only those. If an employer is affected as to an industry elsewhere by a compensation act, it would seem not to be relevant to say the home State cannot well work out its theory, unless what is done elsewhere is also taken into account.

The Grinnell case cites Kennerson v. Thames Towboat Co., 89 Conn. 367, 97 Atl. 372, L. R. A. 1916A 436, and Ronnsaville v. Central R. Co., 87 N. J. L. 371, 94 Atl. 392, in support of its view, that the liability was contractual in its nature and the accident happening outside of employer's State could there be enforced under Workmen's Compensation Act. From the former of these cases there is extensive excerpt from the opinion. But the reasoning is construction of local legislation and there is bald statement that, if the legislation intended to embrace accidents happening elsewhere, this could be done. We challenge the correctness of this principle. It certainly could be limited by express provision in the legislation of another State, as the police power there could take care of the rights of its own residents or of those trusting themselves to the protection of its laws while working in industries within its borders, or it could

give them a right of action for a tort therein committed.

Further, as to action under Workmen's Compensation Acts being in contract, may it not be said the action is for a penalty and that a statutory penalty does not apply outside of the State enacting the statute? Penalty may arise out of contract or what is in the nature of contract, but it is like contract depending upon a record and not upon agreement.

NOTES OF IMPORTANT DECISIONS.

ATTORNEY AND CLIENT—COMPENSATION UPON COMPROMISE BY CLIENT.—In Southworth v. Rosendahl, 158 N. W. 717, decided by Supreme Court of Minnesota, there was suit for an agreed sum by an attorney in a suit contingent upon the successful result of a litigation. Without the attorney's consent this litigation was compromised by the client and the suit dismissed. It was held that the extent of recovery was the reasonable value of the attorney's services, which, however, was not sued for, and it was provided that the judgment in a suit for the specified percentage should not defeat a subsequent action.

The opinion goes into a considerable review of the cases regarding contingent fees, and, advocating the rule, that to hinder compromises is against the policy of the law, the fact that a client exercises his undoubted right is no unauthorized prevention of the enforcement of an executory contract, notwithstanding he may agree in writing not to settle without the attorney's consent.

It may be, says the court, that "where the settlement is made in good faith and without purpose to defraud the attorney, the amount of the settlement may be taken as the basis of the attorney's agreed per cent of the recovery," but this is not a certain rule at all. The only true theory is reasonable value of services performed and no constraint is to be suffered by client in exercising his right of control over the controversy.

ACCIDENT INSURANCE — COMPLETE SEVERANCE OF HAND.—In Continental Casualty Co. v. Bows, 72 So. 278, decided by Supreme Court of Florida, an accident policy provided for recovery of "loss of either hand by complete severance at or above the wrist." Respondent's hand was crushed across the palm and the entire hand was rendered wholly useless. Amputation left the thumb, but is was of no possible use.

The Supreme Court held that it could not be said there was a "complete severance at or above the wrist" and judgment in plaintiff's favor was reversed.

The court speaks of plaintiff as having made a bargain, but being sui juris he is bound by it. But might it not be said that the intent of insurer was to insure for the loss of a hand, where as the result of an accident amputation was rendered necessary? If the amputation completely destroys use at or below the wrist, may not the severance be said to be complete at or below the wrist, taking the rule that contracts of insurance are to be construed favorably to the insured? In this case, the point of amputation was determined by a surgeon after the accident. This was allowable under the policy, but that policy is not to be read in such a way, that greater amputation shall be made than otherwise might be necessary.

In Moore v. Aetna L. Ins. Co., Ore., 146 Pac. 151, it was held that a stipulation the same as in the policy in the instant case left the company liable where amputation made the hand practically worthless. In a policy providing for recovery for loss of "entire" sight, it was said this does not mean total blindness, but where there is practical loss of entire sight this is sufficient for recovery. International Travelers' Assn. v. Rogers, Tex. Civ. App., 163 S. W. 421. Many other cases on this theory might be cited. It does not seem to us that the question of an insured being bound by a hard bargain, but rather what was a fair interpretation of the obligation of the company by its policy construing that policy as insurance policies ordinarily are construed.

SPECIFIC PERFORMANCE—ESSENTIALS OF AGREEMENT SET FORTH.—In Read Drug & Chemical Co. v. Nathan, 98 Atl. 158, decided by Maryland Court of Appeals, the facts show that a tenant expended large sums of money in improving his leasehold upon the faith of lessor's promise to extend the lease for an agreed term and at a stipulated rental. Upon lessor's refusal to extend the tenant filed his bill for specific performance. A demurrer being sustained to the bill, the Court of Appeals reversed the judgment of the trial court.

One ground of demurrer—that the agreement being oral came under the statute of frauds—

was not much pressed, and was easily disposed of because of performance being averred.

The other grounds were that the agreement was not mutual, specific and certain. The court after saying there was no want of mutuality, said: "The agreement is said to be incomplete, and hence incapable of enforcement, because it does not provide for various covenants, which leases of city property usually contain. The bill alleges an agreement to lease a designated property for a prescribed term and at a specified rental. These elements are sufficient to constitute a complete and operative lease. Other provisions may be desirable and useful, but they are not essential to the binding effect of the demise. * * * There is nothing indefinite as to any of the necessary features of the contract, and defendant should not be relieved of its performance merely because it does not contain other and unessential terms, for which the parties might have been expected to make provision."

This ruling appears in no way to militate against the general rule of certainty when a court is appealed to to enforce specific performance of an agreement.

RIGHT OF NEXT OF KIN TO STATUTORY SHARE OF ESTATE OF DECEDENT WHOM HE HAS KILLED.

That a husband might kill his wife or a wife kill her husband, and reap the reward of sharing the estate of the victim that statutes of descent and distribution bestow upon the next of kin, has so shocked the judicial conscience that it is not surprising that we should meet with a diversity of opinion as to the result of the crime; nor is it surprising that we find good, bad and indifferent reasons advanced to support the varying opinions.

The weight of authority is that the wrong-doer is entitled to share in the decedent's estate notwithstanding he is a guilty beneficiary. In the effort to solve the problem, the supporters of the one view or the other follow or reject maxims of the common law, well settled rules of construction and constitutional provisions.

All the decisions agree that the legislative intent must control, but they differ in the method of arriving at that intent.

In a recent case decided by the Kentucky Court of Appeals, the wife murdered her husband and was confined in the penitentiary for her crime. A suit was brought by the administratrix to settle the husband's estate and the wife filed an answer and cross petition, claiming dower in the real estate and certain exempted personal property allowed by statute to a widow. The court allowed her claim for dower as though no crime had been committed and allowed her an equitable share of the exempted personal property, there being six children.

"The question is, can we, upon the theory that the common law forbids a person to take advantage of his own wrong, or upon the theory that public policy forbids a person from obtaining property by his own crime, engraft upon the statute regulating the property rights of husband and wife, or upon the Statute of Descent and Distribution, an exception which they do not contain and thus impose upon one guilty of homicide punishment not provided for in our criminal law? It seems to us that there is but one answer to this question. A statutory right cannot be defeated by the application of a common law principle. Nor can a plain, unambiguous statute be disregarded or amended by the court for the purpose of preventing such evil consequences as may flow from the only interpretation of which it is susceptible."[1]

Public Policy—It is often argued with much force that the public policy of a state should forbid a person from reaping the

(1) Eversole v. Eversole, 169 Ky. 793; cases cited by Kentucky Court of Appeals: Wall v. Pfanschmidt, 265 Ill. 180, 106 N. E. 785, L. R. A. 1915c, 328; Carpenter's Appeal, 170 Penn. 203; 29 L. R. A. 145; McAlister v. Fehr, 72 Kan. 533, 3 L. R. A. (N. S.) 726; Owens v. Owens, 100 N. C. 240, 6 S. E. 794; Deem v. Milliken, 53 Ohio St. 668, 44 N. E. 1134; Shellenberger v. Ransom, 41 Neb. 631, 25 L. R. A. 564; Holloway v. McCormick, 41 Okla. 1, 136 Pac. 1111; Golinik v. Mengel, 112 Minn. 349, 128 N. W. 292; etc.

fruit of his own crime. The answer usually given to this seemingly sound statement is that the public policy of a state is determined by its constitution and statutes, and, where these are silent by the decisions of its courts.[2] Therefore, "when the legislature speaks within the limits of the constitution its declaration of public policy is conclusive."[3] And it is the function of the legislature and not the judiciary to change the policy of the state.[4] But this answer is not complete and certainly is not satisfactory. It is rather dogmatic and seems to need explanation. It may be true that the constitution or statute of a particular state may be couched in such unmistakable terms that there may be no escape from the conclusions reached, however, baneful may be the consequences that flow from it; but sometimes the courts have erroneously decreed that the constitution or statute has spoken in unmistakable terms, because they have ignored common law maxims and well established principles of construction. It is, therefore, of interest to examine some of these maxims and rules.

Common Law Maxims—It is not accurate to state that, "A statutory right cannot be defeated by the application of a common law principle." To state the proposition in this fashion rather begs the question; for we must first determine what is the statutory "right," and by reading the statute in the light of common law principles, the conclusion may be reached that there is no right.

"Every statute is to be construed with reference to the general system of laws of which it forms a part, and must therefore be interpreted in the light of the customary or unwritten law, or other statutes on the same subject, etc."[5] Again, it is stated, "Statutes are to be construed with reference to the principles of the common law in force at the time of their passage, etc [6]

To illustrate by a concrete case: a man by the name of Leroy Sams married and had four children by this marriage. After the death of the first wife, Sams married a second time, and this second woman at the time of the marriage had seven children, who were also the children of Leroy Sams but born to him and the second wife while he was the husband of the first wife. The statute provided: "If a man having had a child by a woman shall afterwards marry her, such child, or its descendants, if recognized by him before or after marriage shall be deemed legitimate." "It is a well-settled rule of construction, that the letter of a statute will not be followed, when it leads to an absurd conclusion; but, on the contrary, the reason for the enactment must enter into its interpretation, so as to determine what was intended to be accomplished by it." It was held, in substance, that read in the light of this common law principle, the statute, though speaking in unambiguous terms, should not be interpretated to legitimize the children born out of lawful wedlock. In other words, the statute gave them no right under the circumstances, for to do so would be to encourage if not reward the father for his crime.[7]

That no man shall profit by his own wrong is a well known maxim, and in numerous cases a man has been denied a remedy because his apparent right was destroyed by his misconduct. This maxim is broad enough to include fraud and deceit and we frequently meet with its application in will contests. Statutes provide who are competent to make wills, how they may be made and how they may be revoked. Indeed, statutes are so minute on

(2) Davies v. Davies, L. R. 36, Ch. Div. 359; Brooks v. Cooper, 50 N. J. Eq. 761, 21 L. R. A. 617; Chreste v. Louisville Railway Company, 167 Ky. 75, 180 S. W. 49, Union Central Life Insurance Company v. Spinks, 119 Ky. 261, 83 S. W. 615, 69 L. R. A. 264.

(3) Eversole v. Eversole, 169 Ky. 793.

(4) Collins v. Metropolitan Life Insurance Company, 232 Ill. 37, 14 L. R. A. (N. S.) 356.

(5) 36 Cyc., 1144.

(6) 36 Cyc., 1145.

(7) Sams v. Sams' Administrator, 85 Ky. 396.

the subject of wills that it is hardly too broad to state that the statute of wills is a law unto itself; yet we find wills are frequently set aside, because they have been procured through undue influence or fraud. To reach this end it was necessary to read the statute in the light of comon law maxims. Surely, in the absence of some controlling constitutional provision or some specific statute on the subject there cannot be one kind of law to interpret the statute of wills and another kind of law to interpret the statute of descent.

The majority opinion of a well considered New York case, which takes an opposite view to the Eversole case and to the weight of authority, had the following facts before it for consideration: Francis B. Palmer made a will, and by it made small legacies to two daughters and disposed of the bulk of the estate to his grandson, Elmer, a boy sixteen years of age and who lived with him. The boy murdered the testator and was punished by criminal proceedings. In denying the boy any share in the estate, the court reasoned in this manner: "A thing within the intention of the makers of a statute is as much within the statute as if it were in the letter; and a thing that is within the letter of the statute is not within the statute unless it be within the intention of the makers." Writers of statutes do not always express themselves perfectly and an equitable construction must be given to them. A construction that produces absurd consequences and manifestly contradictory to common sense is void. The court refers to Bacon and Blackstone in support of its views, and the later author in illustrating his meaning states that if an act of Parliament gave a man power to try all cases arising in his manor he could not try his own case. The court also refers to the Decalogue forbidding work on Sunday, but appeals to the Master who says that works of necessity, charity and benevolence, were not intended to be included by the commandment. It would be a reproach upon our jurisprudence to allow the grandson to share in the estate of his grandfather, under the circumstances. A will that is procured by fraud or deception is set aside, and likewise a similar fate meets immoral or irreligious provisions or provisions against public policy. The main idea of the opinion is that no man shall profit by his own wrong and the court read the Statute of Descent as well as the Statute of Wills in the light of common law maxims and rules.[8]

Fraud Upon Contract Rights—It is sometimes stated, that cases involving murder to procure the proceeds of an insurance policy are not in point because the wrongful act is a fraud upon a contract right. It is difficult to see how contract rights are more sacred than the rights of all the people. The insurance case generally inferred to is one decided by Justice Field of the Supreme Court of the United States.[9] The insurance company issued a policy for $10,000.00 on the life of Armstrong. It was what is known as an endowment policy, that is, it was made payable to Armstrong, if he lived a designated time, or to his "legal representatives," if he died before that time. A man by the name of Hunter procured the issuing of the policy, which Armstrong assigned to him. Hunter's pretext for obtaining the issuing and assignment of the policy was to protect himself against possible loss as the silent partner of Armstrong. His real purpose was to murder the insured and collect the insurance. A few weeks after the policy had been delivered, Armstrong was attacked upon the street and killed. Hunter was accused and hanged for the crime. It must be noticed that Hunter did not sue but the administratrix of Armstrong's estate did, on the theory the policy was not assignable, and, therefore, the right of action was in the administratrix of Armstrong's estate. The court held the whole interest in the policy had been assigned to

(8) Riggs v. Palmer, 115 N. Y. 506.
(9) Mutual Life Insurance Company of N. Y. v. Armstrong, 117 U. S. 591, 29 L. Ed. 997.

Hunter, and his representatives alone would have a valid claim under it, if the policy had not been void from its inception. The court might well have stopped here, but after further discussion concluded by saying: "It would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken." This opinion has been rejected by some courts on the ground that it was a dictum, as Hunter was not before the court; but others have followed it in interpreting the right of an heir or devisee to share in the estate of his victim. The objection is shallow; for it is hardly to be supposed, that had Hunter been a party to the action, he would have been accorded greater rights than the widow of Armstrong.

In the Light of Other Statutes—It may be well argued that if a particular statute must be read in the light of common law principles, so also must it be read in the light of other statutes. Some of the courts, while not expressing the thought in this exact language, have reasoned that other statutes have provided punishment and penalties for crime, and as no penalty was imposed for forfeiture or estate for the courts to add a further penalty would be usurpage of power and overthrowing the legislative intent.[10] In one of the cases referred to—Holloway v. McCormick, Leonard McCormick killed his wife and then shot himself. Joe McCormick, father of the murderer, claimed ownership of one-half of the estate which he claimed had descended to the murderer from his wife. Another of the cases referred to—McAlister v. Fair, the husband murdered his wife and conveyed his interests in her estate to his attorneys as a fee for defending him in the murder trial, and the attorneys attempted to assert their alleged rights. In both cases the contention of the murderers was upheld not only for the reason just stated, but for other reasons that will be noticed immediately.

Constitutional Rights—In some of the cases, including the two just referred to above, some of the courts. in upholding the murderer's claim have referred to constitutional provisions, the substance of which is that no conviction shall work a corruption of blood or forfeiture of property [11] Such a constitutional provision seems to be a real bar to the legal right to deny the claim of the murderer to share in his victim's estate. The reasons that may have led makers of constitutions to adopt a provision of this kind lie in legal history that extends back to the Dark Ages, which however interesting, cannot be explored in an article of this kind.

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(10) Holloway v. McCormick, 50 L. R. A. (N. S.) 536, Okla.; McAlister v. Fair, 3 L. R. A. (N. S.) Kan., 726; Eversole v. Eversole, 169 Ky. 793.

(11) Holloway v. McCormick, supra; McAlister v. Fair, supra.

THE TRIAL OF PAPA FAUSTINO.

The Islands of Leyte and Samaar lie side by side separated by a channel of the sea so narrow as to resemble a river, in fact, when sailing in the Coast Guard boat between the islands, the passenger might readily fancy the coast on either side to be the bank of the river along which he is gliding. It is a very pleasant trip, even for the tourist prone to sea-sickness, as the sheltered and narrow strait is hardly ever seriously disturbed by the winds, which may cause a heavy swell outside without more than ruffling the surface of the placid water dividing the civilized Island of Leyte from the semi-civilized Island of Samaar.

Through both islands extends a range of mountains, in fact, the larger Islands of the Archipelago are similarly divided by mountain ranges running generally from north to south, separating them into an

eastern and a western section, as the rich sugar Island of Negros into the Provinces of Negros Occidental and Negros Oriental. Sometimes the inhabitants are almost or quite strangers to one another, speaking different dialects. On one occasion, when holding a term of court in Dumaguett, the capital of the Prince of Negros Oriental, it became necesary to send for a special interpreter to translate the testimony of a witness from the other side of the mountains, the man from Negros Oriental being unable to understand the language of the man from Negros Occidental.

As in all countries of lowlands and highlands, the highlander is a different being from the lowlander. It also follows that when in an uncivilized or semi-civilized state or before the highlander is fully civilized, as he lingers longer in barbarism, there is no love lost between them, the border line is debatable territory.

The highlanders and lowlanders of the Philippines formed no exception to the rule. The former made raids upon the latter and the latter retaliated. The former accused the latter of cheating them in trade, we fear with too good reason; the latter accused the former of committing robbery, rebellion and other offenses. As was to have been expected, the last to submit to the Insular authorities and engage in insurrectory movements against the government were the semi-wild men of the mountains.

Probably the most formidable uprising against the Insular government since the suppresion of the Aguinaldo Insurrection was that of the Pulajanes of the Islands of Samaar and Leyte about 1905. Whether there was concerted action between the Pulajane chiefs of the two Islands, or whether their nearly simultaneous movement was accidental, was a matter of conjecture. The insurrection continued for more than a year and as many as sixteen hundred troops were in the field at one time before it was finally suppressed.

The Pulajanes—men in red—so called from the color of part of their uniforms, were the soldiers of Papa Faustino in Leyte and Papa Pablo in Samaar, to which leaders were attributed the revolt causing so great anxiety to the Manila authorities. The Popes of the mountain ("Papa" meaning Pope) were religious as well as political leaders. I suspect more religious than political. Theirs was not a universal rebellion, their sole purpose was the expulsion of the Infidels from their particular island and not the overthrow of the Insular government. It may be doubtful whether they even knew of such government or much more of the City of Manila than of the cities of Washington or Madrid. Papa Faustino's Island was Leyte, his horizon was bounded by the coast line of Leyte; here his people lived, here was the home of the faithful, and from here the Infidel should be driven and the land purged of his obnoxious presence. Of course, the indefinite information outsiders had of the Pulajanes and their chiefs was from rumor, which may have been true and may have been false, or partly true and partly false. I think that Papa Faustino's view was not as wide as the entire island; it did not extend to the coast line but was circumscribed to the mountain side and that he would have been well content had he and his adherents been permitted to dwell undisturbed in their mountain homes.

There appears to have been an element of the mythical in the mind of the mountain dwellers which found expression in the Popes or spiritual leaders. Perhaps the best-known was Papa Isio, of the Island of Negros, who enjoyed a reputation for sanctity among his followers long before the American occupation. Papa Isio was seldom seen by ordinary mortals, spending his time, as his followers said, alone on the mountain top, engaged in prayer for the world. I have been told that upon the death of a Pope another was immediately appointed, so a spiritual head was never wanting. As in France, on the

death of the king, the Crier proclaimed, "The King is dead; long live the King," so along the mountain side the proclamation of the death of one Pope announced the appointment of his successor.

The Pulajanes were, perhaps, the most formidable native troops the United States forces ever encountered in the Philippines, excepting the Moros of Mindanao and the Sulu Archipelago. They fought with almost the fanatical zeal of the Mohammedans. They were, like the Moros, religious fanatics. Before going into battle an Ang-ting-ang-ting prepared by Papa Faustino was hung about their necks which sacred charm was supposed to shield them from all harm. The faithful were assured that the Americano's bullet would whistle harmlessly past the soldier protected by the potent token, but if they failed to wear it the missile would follow wherever they fled for safety, through the tree, around the rock or in the cave. When an explanation was desired by those who had seen the Ang-ting-ang-ting on the breast of a Pulajane lying dead on the battlefield, they were informed that the wearer lacked faith; that he allowed his fear to overcome his confidence; that amidst the flying bullets he exclaimed in his terror, "Aha; aha;" one struck him and he died. The Pulajanes were also strengthened for their holy warfare by the assurance that those falling on the battlefield would rise from the dead the third day.

The troops of Papa Faustino, thus protected by the Ang-ting-ang-ting, and encouraged by the assurance of a speedy resurrection, and the realization they were fighting for the supremacy of the true faith and expulsion of the infidel went forth to war animated by a zeal that made him a formidable foe even to troops armed with the most approved weapons of modern warfare. They especially detested the Insular Constabulary, whom they regarded as renegades to their country. These troops were first used to maintain order and put down the turbulent men of the mountains. Proving inadequate to the task, the native United States troops—the Filipino Scouts—were sent to their assistance, who later were supplemented by regular troops so that finally, Constabulary, Scouts and regular troops were engaged in the war. White, brown and black soldier, for we had them all, had taken the field against the outlaw bands. Favored by their rugged country, which made pursuit exceedingly difficult, the unequal contest was maintained by the Pulajanes for more than a year. They engaged in unfortunate raids which resulted disastrously for them, their chiefs were killed or captured; large numbers of the fighting men were taken or slain; finally Papa Faustino fell into the hands of the enemy and all was over.

A large number of the prisoners were tried; some of the most prominent receiving the death sentence, others were sent to the Insular prison at Manila; some few, I believe, but not many, were acquitted. Papa Faustino was one of the last tried. He had been severely wounded, so seriously that, for a time it was doubtful whether he would ever appear in court. As he sat before the court, and his witnesses testified and his own testimony was given, it was very difficult to define his status—whether he was a willful deceiver or was self deceived. The prosecution regarded him as a mere charlatan, posing before a deluded people whom he had led to destruction for his personal, selfish aggrandizement. The popular opinion was probably unjust to the prisoner, who was not altogether good neither altogether bad. Like most similar characters, he was partly self deceived and partly a deceiver of others. The mystical mind of the mountain folk found expression in him and the other religious leaders. He may have believed in his Ang-ting-ang-ting, which was a disc of white paper, inscribed with fragments of prayers. He may have, and very likely did, believe in his mission to drive the stranger from the country, as he certainly did believe

them to be foreigners and infidels and as such, enemies to the true faith.

It was unfortunate for Papa Faustino to be tried directly after some of the most notorious of the military chiefs were tried, who had been guilty of atrocious deeds of murder and robbery for which they had received the extreme penalty of the law. It seemed inconsistent to impose a heavier penalty on his subordinates than on their chief who had inaugurated the insurrection, called them to the field, and whom they were supposed to obey.

Papa Faustino denied being responsible for the barbarous deeds of the outlaws. His vocation, he said, was not that of a soldier; the military duties were performed by the military chiefs. The last expedition, which had terminated disastrously to the cause, had been undertaken without his approval and, indeed, against his consent. According to his testimony, the military chiefs had been too strong for him. The fact remained, however, that he was the head of the Pulajane outbreak, its spiritual and political, if not its military leader. The court felt constrained to award the same sentence to their chief that had been imposed upon the subordinate leaders. The trial judge, however, and the general commanding the department, united in a recommendation to the governor-general to mitigate the sentence to life imprisonment; the Insular Government, however, saw fit to disregard the commendation, though made by the two officials perhaps best acquainted with the facts of the case. The General considered it the best policy, in which the trial judge agreed with him, to cause the prisoner to be forgotten by putting him in the penitentiary rather than making a hero and martyr by putting him to death.

The bravery of the Pulajanes was not caused alone by their religious zeal, for of all Christian Filipinos, they are cast in the most heroic mould. Their favorite weapon, in fact, the national weapon, was the war bolo; their favorite mode of attack was to take the enemy by surprise with a rush, carrying all before them, and getting within their ranks before they could bring their rifles to bear, when they would wield their long, keen-edged bolos with terrible effect. The numerous defendants in the Pulajane trials were among the finest specimens of manhood I saw while in the Islands; among them were two sons of Papa Faustino, who were, as I now recollect, discharged without trial. They were both young fellows of prepossessing appearance. I hope they are still living, and wish them all happiness and prosperity.

These semi-wild men of the mountains will make, I predict, the best element of the future population of the Islands. The traits that made them formidable in war will make them desirable citizens in time of peace. There will be no more intelligent, vigorous, enterprising and energetic citizens of the future Republica Filipena than the sons and grandsons of the Pulajanes who composed the troops of Papa Faustino and Papa Pablo.

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Washington, D. C.

CONTRACTS—RESTRAINT OF TRADE.

RAWLEIGH MEDICAL CO. v. OSBORNE.

Supreme Court of Iowa. June 29, 1916.

158 N. W. 566.

A contract whereby plaintiff sold defendant large quantities of drugs on credit, and defendant agreed to sell no other such goods, and to sell at fixed prices, within certain territory, the contract containing provision for release of defendant on payment of amounts due, was not illegal as in restraint of trade, but the conditions exacted might be regarded as security for

Appeal from District Court, Buena Vista County; N. J. Lee, Judge.

Action to recover the contract price of goods sold and delivered under a written contract. The answer was a general denial, with an admission, however, of the execution of the contract and of the receipt of the goods thereunder. The defendants also pleaded that the goods in question were purchased by the defendants for the purpose of resale to others, that such goods were worthless, and that their

sale to the defendants was a fraud, and that their sale by the defendants to others would be a fraud. On the trial the defendants admitted the receipt of the goods as pleaded in the petition and admitted the contract price thereof. The defendants offered no testimony in support of the affirmative defense of failure of consideration. At the close of the trial each party moved for a directed verdict. The motion of the plaintiff was sustained. From the judgment entered for the plaintiff, the defendants have appealed. Affirmed.

EVANS, C. J. The plaintiff set forth in his petition a copy of the contract sued on. Its execution was admitted by the defendant. As already indicated, the defendant pleaded a want of failure of consideration, but offered no evidence in support of such defense. The general contention now made by the defendant is that the contract sued on was illegal and void, as being contrary to public policy and contrary to the federal statute known as the Anti-Trust Law, and contrary to those statutes of the State of Iowa which deal with restraints of trade. It is urged by the appellee that this contention and argument are not justified by the pleadings in the case. Such was also the view adopted by the trial court. The question, therefore, lies at the threshold of the case, and must receive our first consideration.

The contract between the plaintiff and the principal defendant, Wm. H. Osborne, as set up in the petition, was as follows:

"Exhibit A—Contract.

"Whereas, Wm. H. Osborne, of Emmetsburg, Iowa, desires to purchase of the W. T. Rawleigh Medical Company, of Freeport, Illinois, on credit and at wholesale prices to sell again to consumers, medicines, extracts, spices, soaps, toilet articles, perfumes, stock and poultry preparations, and other goods manufactured and put up by it, paying his account for such goods in installments as hereafter provided:

"Therefore he hereby agrees to sell no other goods than those sold him by this company, to sell all such goods at regular retail prices to be indicated by it, and to have no other business or employment.

"He further agrees to pay said company for all goods purchased under this contract the current wholesale prices of such goods by remitting in cash each week to said company an amount equal to at least one-half of the receipts from his business until his account is balanced, and for that purpose, as evidence of good faith, he shall submit to said company weekly reports of his business: Provided, however, if he pays his account in full on or before the tenth day of each month, he is to be allowed a discount of three per cent. (3%) from current wholesale prices. Upon termination of this contract from any cause or by either party, he further agrees to settle in cash within a reasonable time the balance due said company on account.

"Unless prevented by strikes, fires, accidents, or causes beyond control, said company agrees to fill and deliver on board cars at place of shipment, his reasonable orders, provided his account is in satisfactory condition, and to charge all goods shipped him under this contract to his account at current wholesale prices; also to notify him promptly of any change in wholesale or retail prices.

"Said company further agrees to furnish him free of charge on board cars at place of shipment a reasonable amount of first-class advertising matter, report and order blanks, and printed return envelopes, for his use in conducting his business; also to give him free of charge, after he had begun his work, instructions and advice, through letters, bulletins and booklets, as to the best methods of selling its products to customers.

"This contract is subject to acceptance at the home office of the company, and is to continue in force only so long as his account and the amount of his purchases are satisfactory to said company: Provided, however, that said Wm. H. Osborne or his guarantors may be released from this contract at any time by payment in cash the balance due said company on account.

"Dated at Freeport, Illinois, November 17, 1909. The W. T. Rawleigh Medical Company, by W. T. Rawleigh, President. Wm. H. Osborne. (Salesmen sign here in ink or indelible pencil.) (Seal.)"

On the back of the said contract appeared the following memoranda:

"1588
Contract with
Name, Wm. H. Osborne.
Received, Nov. 22, 1909.
Inv. CMR. Nov. 22, 1909.
Approved by Karf.
Accepted Dec. 2nd, 1909.
Price list and copy mailed Dec. 2, 1909.
Territory selected.
State, Iowa.
County, Dickinson.
Selection recorded."

Manifestly the foregoing contract does not on its face disclose any illegality. On the trial, however, the defendant introduced certain testimony consisting of certain letters and written instructions issued subsequently to the contract. Upon these the defendant's contention is largely predicated, the theory being that they were a part of the contract, and that

they indicated the construction of the contract which was put upon it by the plaintiff. These exhibits were received by the court over the objections of the plaintiff that they were irrelevant to any issue made by the pleadings, and were so received subject to a motion to strike. We have to consider, therefore, whether this evidence was relevant to any issue tendered by the defendant's answer.

For the plaintiff it is contended that the question of the illegality of the contract was not made in the answer at all, except on the ground of a failure of consideration. On the other hand, the defendant contends that he pleaded the illegality of the contract in his amendment to his answer. The amendment so relied on by the defendant was as follows, in full:

"Further answering, the defendants state that the drugs and nostrums, goods and merchandise for which the plaintiff seeks to charge the defendant, including liniments, anti-pain oil, Golden cough syrup, cough balsam, Ru-Moxol cod liver oil, extract, tonic laxative, application and gall remedy, female tonic, balm vitus, extracts and flavors, pain expeller, toilet articles, spices, pills, salves, healing powder, dips and disinfectants, louse killers, condition powders, and stock foods, were and are worthless and of no value, and wholly useless for the purpose for which the plaintiff offered them for sale and sold them to the defendant Osborne; that they were offered for sale to the defendant Osborne by the plaintiff with the intention on the part of the plaintiff and the said defendant to sell them to others; that such sale and the sale thereof to others would constitute a fraud upon the defendants and to the person purchasing the same; that the said goods and merchandise contained no curative or valuable qualities, and the pretended sale thereof by the plaintiff to the defendant Osborne was a violation of law, and by reason of the foregoing the defendant has been damaged in a sum equal and in excess to the claim made by the plaintiff in this suit. Wherefore the defendants pray the plaintiff's cause of action may be dismissed and the defendants have judgment for costs."

We think it quite clear that this amendment furnished no basis for the introduction of the evidence in question nor for the contention in argument now urged by the defendant.

The case presented therefore is one where no illegality appears upon the face of the contract sued on and none appeared in the evidence introduced on behalf of the plaintiff. If we assume, therefore, that the evidence thus introduced by the defendant tended to show the illegality and voidability of the contract as a violation of law, it was clearly incumbent upon the defendant to plead such illegality as a basis for such evidence.

Indeed, if we were to ignore the question of pleading and were to give full consideration to the evidence of the defendant, we are not favorably impressed with the legal merits of the argument of illegality. The emphasis of this argument is laid upon the fact that the defendant agreed to sell the goods at retail prices to be indicated by the plaintiff, and that the territory of the defendant was to be limited to Dickinson county, and that the defendant was to devote his time and attention exclusively to the sale of the plaintiff's goods. The argument is that, inasmuch as the plaintiff had sold the goods to the defendant, it had no further lawful interest in fixing the retail price or the territory where resale should be made. Without going into the greater depths of this question, it is enough for the purpose of this case to note that the plaintiff was undertaking to sell to the defendant an unlimited quantity of goods, and it was extending credit therefor; that the amount of the respective installments to be paid was to be measured in each case by an aliquot part of the sales made during the previous period. The provisions thus emphasized fairly tended to operate as security for the payment of the purchase price. The final clause in the contract provided in express terms:

"That said W. H. Osborne or his guarantors may be released from this contract at any time by payment in cash of the balance due said company on account."

We reach the conclusion, therefore, that the trial court properly held that there was no basis in the pleadings for the present contention of illegality.

The judgment below must therefore be affirmed.

NOTE.—*Fixing Prices on Resale by Retailer of Manufactured Articles.*—It is laid down in Dr. Miles Med. Co. v. John D. Park & Sons Co., 220 U. S. 373, 55 L. Ed. 502, 31 Sup. Ct. 376, that to sustain a contract in restraint of trade "it must be found to be reasonable both with respect to the public and to the parties and that it is limited to what is fairly necessary, in the circumstances of the particular case, for the protection of the covenantee. Otherwise restraints of trade are void as against public policy." This case concerned prices of a manufacturer's products to be asked in all resales by wholesalers and by retailers. It was also said in this case that: "The public welfare is first to be considered, and if it be not involved, and the restraint upon one party is not greater than the protection to the other party requires, the contract may be sustained."

In Nordenfelt v. Maxim-Nordenfelt, etc., Co., 1904, Appeal Cases, Lord Macnaghten said: "The

public have an interest in every person carrying on his trade freely; so has the individual. All interference with individual liberty of action in trading, and all restraints of trade themselves, if there is nothing more, are contrary to public policy and therefore void. That is the general rule. But there are exceptions: restraints of trade and interference with individual liberty of action may be justified by the special circumstances of a particular case. It is a sufficient justification, and indeed it is the only justification if the restriction is reasonable—reasonable, that is, in reference to the interests of the parties concerned and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favor it is imposed, while at the same time it is in no way injurious to the public."

It seems certain that when such a restriction is injurious to the public, it cannot be saved because great benefits are to be derived by participants. See People v. Sheldon, 139 N. Y. 251; Montague & Co. v. Lowry, 193 U. S. 38. But it has been held that if a manufacturer's name has become identified with his goods he may protect that when goods are resold. Mazetti v. Armour & Co., 75 Wash. 622, 135 Pac. 633, 48 L. R. A. (N. S.) 213, but this case did not refer to restriction in resale of the manufacturer's goods. And if a manufacturer makes his own bargains in the sale of his goods, he hardly ought to be thought entitled to place restriction as to prices on resale whether the retailer buys from him on credit or for cash. He takes the peril of not being able to collect where he sells on credit and either way he sells he passes title to the retailer. There is the same injury to the public in the fixing of prices on resale as if all the sales to retailers were for cash.

Our Supreme Court and the English Court of Appeals in the excerpts above shown lay as great stress on the public interest being protected as on covenantees being protected—indeed, they appear to lay greater stress on protection of the former than of the latter. Like the writer of the opinion in the instant case, we find no case directly adjudicating the point it decides, that is to say, the enhancing of security protects the contract which otherwise might be void.

C.

ITEMS OF PROFESSIONAL INTEREST.

RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

QUESTION No. 105.

Advertising—In professional journal; soliciting employment by attorneys; specific form disapproved.

In the opinion of the committee is there any professional impropriety in an advertisement inserted in a local law journal and couched in the following terms:

A New Departure In Consultation Practice.

As an experiment, until this notice is withdrawn or modified, will, to the best of my ability, without special research, furnish to attorneys of the State of ———, as hereinafter noted, answers (signed by me) to questions as to the law of the State of ———, to aid in either office or court work.

All questions must be impersonal and presented in duplicate, one to be made part of and so returned with answer.

No citation of authority given unless called for in question and then charge will be doubled, and, if either discussion of authority or authority pro and con called for, charge will be trebled.

Oral conference, either before or after answer, will increase charge one-half. Charge for each answer without citation of authority or oral conferences, not less than five or more than ten dollars.

Right to decline to answer any question reserved.

(Name.) (Address.) (Telephone Number.)

ANSWER No. 105.—The committee has disapproved a somewhat similar appeal made in the form of a letter to members of the bar (Question No. 46). The proposed unsolicited offer of professional services published in a law journal appears to the committee to be quite as objectionable.

QUESTION No. 107.

Relation to Third Person Demand—Making demand with threat of legal consequences of refusal—Not disapproved.

Is a lawyer justified in sending a letter to a debtor owing a debt secured by mortgage, that unless the claim is paid within a time fixed, an action will be brought for the foreclosure of the mortgage?

ANSWER No. 107.—In the opinion of the committee, there is no objection to the course suggested in the question.

QUESTION No. 109.

Relation to Other Attorneys; Solicitation—Solicitation of professional employment by former employe of firm of lawyers, from clients of such firm—Disapproved.

Canon 27 of the American Bar Association states that the solicitation of business by personal communications or interviews, not warranted by personal relations, is unprofessional. In the opinion of the committee is there essential impropriety in any of the following methods of solicitation of professional employment by an attorney, formerly employed by a firm of lawyers still continuing to practice, who has now established

his own firm; such solicitation being directed to those clients of his former employers with whom he came into direct and close personal professional relations, while in the former employment and by reason thereof:

(a) By a simple card or letter of announcement of the formation of his new firm.

(b) By a direct notification of the formation of his new firm and a request for professional employment from such clients.

(c) By such last-mentioned notification and request, including a specific request to such clients, without the knowledge or consent of his former employers, that his new firm or he be substituted for his former employers in the continued charge of professional matters which, during his former employment, were then in his especial personal charge by direction or permission of his former employers and as their employe.

(d) By adding to the solicitation indicated in (c) an explanation of the reasons why he conceives himself better equipped to render efficient service than his former employers because of his greater personal familiarity with the matters gained while in such former employment.

(e) Provided, first, such respective acts of notification and solicitation be after the termination of his former employment.

Or, second,

(f) While still in the employ of the firm, whose clients he thus solicits.

ANSWER No. 109.—In the opinion of the committee, the solicitation by an attorney of professional employment from the clients of the firm by which he was formerly employed, in any of the methods mentioned in the question except the method mentioned in subdivision (a), is unprofessional, and disloyal to his former employers. The lawyer owes it to his employers, as counsel owes it to his attorney of record, not purposely to induce, through the opportunity afforded him by the confidential relation in which he is placed, the transfer of professional employment from his employers to himself. (See Canon 27, American Bar Association, 1st half.) The circulation of a professional card is not condemned by the Canon.

BOOKS RECEIVED.

The Federal Trade Commission, its nature and powers. An interpretation of the Trade Law and Related Statutes. By John Maynard Harlan and Lewis W. McCandless of the Chicago Bar. Price, $2.50. Chicago. Callaghan & Company. 1916. Review will follow.

HUMOR OF THE LAW.

An Atchison woman, a witness in court, told the judge:

"He said I had failed to keep a date with him. I'm a married lady, and don't make dates. And besides, he isn't my kind of a man."—Kansas City Bar Monthly.

"You say this western statesman styles himself 'Tornado Bill'?"

"Yes. Among his constituents he's the big wind, but by the time he reaches Washington his velocity has spent itself and becomes a feeble whisper."

"So you are summoned as a witness, hey? Now you be keerful."

"Keerful about what?"

"I see a jedge rebuked a man fer not coming into court with clean hands. Look out fer that, and also be keerful to wipe your feet."—Kansas City Bar Monthly.

"Your Honor," said the learned lawyer, defending an arson case, "I shall first prove to the jury that the defendant is incapable of such a crime. If that does not convince, I shall show that my client was insane when the crime was committed. If that fails, I shall prove an absolute alibi; and, as a last resort, may it please the court, I shall show that the building was over-insured and, consequently, there was no loss, and that this alleged crime was only a neighborly kindness to the owner of the building."—Ex.

Ephraim Jones was charged with stealing a dozen and a half jars of peach jelly from Mrs. Watson's cellar.

He stood in humble silence while the arresting officer and the judge discussed the demerits of the case.

"He did it all right, Your Honor," said the policeman. "I was watching him when his head peeped through the door. His arms were filled with jars."

"Yes," commented Judge Briles, "from all I can understand, this prisoner deliberately broke into that cellar, waited until he thought the coast was clear, and then grabbed up as much as he could carry. Ethically, it is apparent, moreover, that—"

The negro broke in at this juncture.

"Pawden me, judge," he declared, "but whut's de use en you' folks wastin' all er dis yere legalish talk? I'se done made up mah mind ter say I done hit enyhow."—Case and Comment.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Attorney and Client**—Priority.—Right to set off a judgment for plaintiff on an account against a former judgment against plaintiff in her replevin action, growing out of the same subject-matter, held superior to the claim of the attorneys for defendant to a lien in the former action.—Rayworth v. Henry, Wis., 158 N. W. 57.

2. **Bankruptcy**—Bulk Sales Law.—A creditors' bill may be maintained by a trustee in bankruptcy against those who have purchased and disposed of the entire assets in violation of the Bulk Sales Law.—Niklaus v. Lessenhop, Neb., 157 N. W. 1019.

3. **Banks and Banking**—Collateral Attack.—The validity of a national bank's incorporation is not open to collateral attack by the stockholder, whose liability the receiver seeks to enforce.—Weitzel v. Brown, Mass., 112 N. E. 945.

4.——Depositor.—The real owner of a deposit may establish his right to the fund, and when it is established it should be paid over to him, though deposit stands in the name of another.—Hulbert v. All Night and Day Bank, Cal., 157 Pac. 546.

5.——Collection.—Where a bank, in good faith and without negligence, indorses, and forwards for collection a check on another bank which pays the check on presentation, the drawee bank cannot, on discovering the check to be a forgery, recover from the bank to which it was paid.—State Nat. Bank of Albuquerque v. Bank of Magdalena, N. M., 157 Pac. 498.

6.——Misappropriation. — Where a national bank's president misappropriated the money to his own use without the depositor's knowledge or consent, the fact that the depositor's attempted authorization of the bank to loan his money was illegal could not avail it, such act not being within the attempted authorization.—Verrell v. First Nat. Bank of Roseburg, Ore., 157 Pac. 813.

7. **Bills and Notes**—Evidence.—In action on note which had been marked "Paid" and delivered to maker, admission in evidence of letters of defendant tending to show plaintiff's infatuation for defendant was not error.—Helman v. Strong, N. D., 157 N. W. 986.

8.——Extension.—Where the maker of a note agrees with payee that he will pay the note if the time is extended, the maker's promise to extend is a new contract free from a good defense to the note existing before such agreement.—Merchants' Nat. Bank of Massillon, Ohio, v. Nees, Ind., 112 N. E. 904.

9.——Fraud.——It is a good defense to a note for purchase of corporate stock that it was given because of fraudulent representations by the seller, who was in almost sole charge of the corporation, as to the book value of the stock and as to certain prominent men being on the board of directors.—Gates v. Gregory, Wash., 157 Pac. 470.

10.——Moratorium.—The Moratorium Act of Manitoba, Can., prohibiting suit on mortgage until one year after default, held not to affect plaintiff's right to sue on notes executed in Minnesota and secured by a mortgage on land in Manitoba.—Hewitt v. Dredge, Minn., 157 N. W. 1080.

11.——Protest.—Where notes stated on their face that the makers and indorsers waived diligence, demand, protest and notice, the indorsement on the back of the notes constituted a waiver by the indorsers, without any separate statement thereof.—White v. Standard Lumber & Wrecking Co., Cal., 157 Pac. 544.

12. **Carriers of Goods**—Assumption of Risk.—Where plaintiff, not wishing to wait for refrigerator car, accepted a box car in which to ship potatoes, expressly assuming by indorsement on shipping order the risk of freezing, he could not recover damages for freezing, there being no evidence that damage was caused by delay, notwithstanding How. Ann. St. § 6761.—George W. Lardie & Son v. Manistee & N. E. R. Co., Mich., 158 N. W. 31.

13.——Conversion.—In action against carrier for conversion of goods shipped, it is good defense that property was seized under legal process regular on its face.—Burkee v. Great Northern Ry. Co., Minn., 158 N. W. 41.

14.——Rates.—A railway company operating two lines between the same points should transport shipments over that line which will give the shipper the benefit of the cheaper rate when there is any difference in the rate.—Solum v. Northern Pac. Ry. Co., Minn., 157 N. W. 996.

15.——Tariffs.—Interstate shipper is conclusively presumed to know shipping rate, according to printed and posted tariffs filed with Interstate Commerce Commission, and that rate automatically attaches to shipment according to declared value.—Enderstein v. Atchison, T. & S. F. Ry. Co., N. M., 157 Pac. 670.

16. **Carriers of Passengers**—Care of Passengers.—Exceptions to rule as to services to passenger required of carrier are passengers who because of illness, age or other infirmity

are unable to help themselves.—St. Louis & S. F. Ry. Co. v. Dobyns, Okla., 157 Pac. 735.

17.——Relation.—The rule applicable to street cars, governs in determining when the relation of carrier and passenger ends as to one alighting in a street from an interurban train.—Welsh v. Spokane & I. E. R. Co., Wash., 157 Pac. 679.

18. **Chattel Mortgages**—Pleading and Practice.—It was error to refuse to allow amendment to affidavit of illegality interposed to foreclosure of chattel mortgage, setting up that money secured was obtained at instance of payee to secure dismissal of criminal warrant, and that president of corporation holding note was present and knew its purpose and consideration. —McConnell v. Cherokee Nat. Bank of Rome, Ga., 88 S. E. 824.

19.——Security.—Where note of third person indorsed by buyer was included in chattel mortgage for balance of price, it was secured by the mortgage notwithstanding testimony that it was received in lieu of cash.—Holt Mfg. Co. v. Brotherton, Wash., 157 Pac. 849.

20. **Commerce**—Foreign Corporation.—A contract for the sale of machinery by plaintiff, a foreign corporation not licensed to do business in the state, which was not to be binding on plaintiff until approved at its home office, being interstate commerce, was not void under Stats. 1915, § 1770b.—Charles A. Stickney Co. v. Lynch, Wis., 158 N. W. 85.

21.——Industrial Insurance.—Repair of railroad bridge used in interstate commerce is not subject to operation of the state industrial insurance act (Laws 1911, c. 74), notwithstanding repairs were foundation for new bridge.—State v. Bates & Rogers Const. Co., Wash., 157 Pac. 482.

22.——Interstate Transaction.—Gen. St. 1909, § 4398, forbidding consignee of liquor to give order on carrier for it, as applied to shipment from another state, is not undue interference with interstate commerce, irrespective of Webb-Kenyon Act.—Danciger v. Cooley, Kan., 157 Pac. 453.

23.——Safety Appliances.—A switching operation in which interstate cars are moved may be within the federal Safety Appliance Act; the test of the application of such act being the use on an interstate railroad of a car not equipped with automatic couplers and not its actual use at the time in moving interstate traffic.—Hurley v. Illinois Cent. R. Co., Minn., 157 N. W. 1005.

24. **Conspiracy**—Conspirators. — Where defendant joined with others only at late stage of transaction whereby plaintiff by fraud was induced to buy a farm at more than value, helping to carry it through and participating in fruits, he was as much a conspirator as those who originated design.—Wolfgram v. Dill, S. D., 157 N. W. 1059.

25. **Constitutional Law**—Due Process of Law. —An illegal contract is void ab initio, and thereafter the denial of the right to enforce it does not work a deprivation of property without due process of law, though the contract was between citizens of different states.—Gwathmey v. Burgiss, S. C., 88 S. E. 816.

26.——Intoxicating Liquors.—Since persons dealing in intoxicating liquors have no vested right in a jury trial in order to determine whether or not their place of business is a public nuisance, for such purposes an action in equity constitutes due process of law.—State v. Stoughton Club of Stoughton, Wis., 158 N. W. 93.

27. **Contracts**—Illegality.—Principal employing agent to make collections in violation of criminal law cannot recover from agent amount collected.——Danciger v. Cooley, Kan., 157 Pac. 453.

28.——Fraud.—Merely representing, to man in possession of faculties and able to read, that writing embodies verbal understanding, is not such fraud as will avoid instrument.—Ames v. Milam, Okla., 157 Pac. 941.

29.——Resales.—A contract for purchase of automobiles to be resold on commision is not void because reserving to manufacturer right to change price at which they were to be sold, subject to variations in the market; it appearing in no case was agent's commission to be changed.—Thomas v. Anthony, Cal., 157 Pac. 823.

30.——Mutuality.—A contract which reserved to defendant right to cancel on 15 days' notice, and to return to plaintiff unused deposits, is not void for lack of mutuality.—Thomas v. Anthony, Cal., 157 Pac. 823.

31. **Creditors' Suit**—Equity. — Subsequent creditors of grantor in deed operating as mortgage may subject his equity of redemption to payment of their lien debts.—Harvey v. Shipe, W. Va., 88 S. E. 830.

32. **Deeds**—Boundaries. — A conveyance to lumbermen of a strip one rod wide from the meandered shore of a river, including lake and bayous, held to be a strip one rod wide from high-water mark of river.—Polebitzke v. John Week Lumber Co., Wis., 158 N. W. 62.

33. **Drains**—Damages. — Drainage district that is negligent in construction of ditch, thereby casting surface water on lands of another, is liable for damage caused thereby.—Dryden v. Peru Bottom Drainage Dist. No. 1 of Memaha and Otoe Counties, Neb., 158 N. W. 54.

34. **Embezzlement**—Instructions.—It was not error to instruct as to count charging embezzlement of specific sum of corporate money that it was not necessary to prove embezzlement of whole amount on any particular day, but, if jury finds continuous series of felonious conversions before date named and subsequent to January 1, 1914, aggregate sum not over specified sum should be considered amount of embezzlement.—Bauer v. State, Neb., 157 N. W. 968.

35. **Eminent Domain**—Damages.—Where by numerous tracks and running numerous trains a railroad made imperative building of viaduct to take street over tracks, as was required by city ordinance, and which damaged plaintiff's property, the road, and not the city, was liable. —Cook v. Salt Lake City, Utah, 157 Pac., 643.

36.——Highway.—A highway is a substantial right, the taking of which must be compensated. —Edgefield County v. Georgia-Carolina Power Co., S. C., 88 S. E. 801.

37.——Public Use.—If application for condemnation specifies desired use of realty, and shows it is necessary for improvement, all damages caused by taking, properly exercised, will be included, and will be bar to further claim for such damages.—Bunting v. Oak Creek Drainage Dist., Neb., 157 N. W. 1028.

38. **Estoppel**—Deed.—One who joins with the owner of the fee in executing a deed cannot thereafter establish a lien on the land on the ground that the grantee did not pay full value thereof, and paid nothing except to the fee owner.—Dillenbach v. Kerr, Neb., 157 N. W. 1018.

39.——Reliance.—As only those to whom the representation is made or their privies can take advantage of an estoppel by conduct, representation by a depositor in a bank to a national bank examiner cannot avail the bank which he was examining.—Carlon v. First Nat. Bank of Roseburg, Ore., 157 Pac. 809.

40.——Trustee.—A trustee of a financially embarrassed corporation, acting as secretary pro

tem at a meeting of the trustees at which a resolution is passed to transfer the company assets, is not estopped by such action to urge that the company is not a bona fide holder of his fraudulently induced note which was among such assets, where he did not know of its transfer to the company.—Gates v. Gregory, Wash., 157 Pac. 470.

41. **Executors and Administrators**—Laches.—Application to file claim in probate court several months after instructions to present claim, advice to attorney when time to present claim expired, expiration of such time, and reminder to attorney of default, shows such laches that denial of application to receive claim was no abuse of discretion.—State v. Ross, Minn., 157 N. W. 1075.

42. **False Pretenses**—Check.—A check obtained by false pretenses was a thing of value where there was money in the bank for its payment, and the offense was complete when the check was obtained.—State v. Holmes, Kan., 157 Pac. 412.

43.——Indictment.—Indictment charging attempt to obtain by false pretenses promissory note alleged to be property of "estate of decedent named" is defective on demurrer for failure to allege ownership in personal representative.—State v. Cutlip, W. Va., 88 S. E. 829.

44. **Ferries**—Damages.—Where by the construction of a dam the operation of a county cable ferry has been rendered more difficult and expensive, an action for damages may be maintained by the county.—Edgefield County v. Georgia-Carolina Power Co., S. C., 88 S. E. 801.

45. **Fraud**—Principal and Agent.—Where real estate men knew their agent was practicing fraud on plaintiff by inducing him to buy land at more than value, and ratified agent's acts, and accepted proceeds of sale, they were liable for his fraudulent acts.—Wolfgram v. Dill, S. D., 157 N. W. 1059.

46.——Statute of Limitations.—Purchaser of hotel discovering fraud after execution of contract is not barred from setting up counterclaim for damages by payment of 10 notes for price without objection.—Van Natta v. Snyder, Kan., 157 Pac. 432.

47. **Fraudulent Conveyances**—Bulk Sales Act.—Where defendant bought goods in bulk and required sworn list of creditors, and person whose name was not on list instituted suit on debt of seller, but dismissed it, buyer could not recover of seller or his trustee in bankruptcy expense of preparing to defend.—Futoransky v. Pope, Okla., 157 Pac. 905.

48. **Gaming**—Future Sales.—A contract for future sale of cotton cannot be enforced where there was no intention as required by statute to deliver the actual staple under the theory of equitable estoppel, payment, or account stated.—Gwathmey v. Burgiss, S. C., 88 S. E. 816.

49. **Homestead** — Joinder in Conveyance. — Where the wife does not join in or assent to an agreement by her husband to give to a town a right-of-way for a road across the homestead, such agreement is void.—Warsaw Tp. v. Bakken, Minn., 157 N. W. 1089.

50. **Husband and Wife**—Community Property.—The fact that a husband joined his wife in a mortgage given on lots owned by the wife and standing in her name was not conclusive evidence that the lots were community property.—Glaze v. Pullman State Bank, Wash., 157 Pac. 488.

51.——Guardian ad Litem.—Where a husband suing as an incompetent by his wife as guardian ad litem had no interest in the property sought to be recovered as community property, he had no standing to question the validity of her conveyance, the fact that she was his guardian ad litem having no bearing on the situation.—Thompson v. Davis, Cal., 157 Pac. 595.

52. **Infants**—Juvenile Courts. — Though a woman has reached 18 years of age and is married, nevertheless, under Juvenile Court Act, St. 1909, p. 213, and as amended by St. 1915, p. 1225, juvenile court may control her as a delinquent person until she reaches the age of 21.—Ex parte Willis, Cal., 157 Pac. 819.

53. **Innkeepers**—Lien.—In an action to recover a trunk detained by defendants under Civ. Code, § 1861, giving lodging house keepers a lien upon property of lodgers for charges due, failure of the court to find upon what theory lien was denied, being a material issue, was reversible error.—Fox v. Windemere Hotel Apartment Co., Cal., 157 Pac. 820.

54. **Insane Persons**—Appeal and Error.—A guardian of an insane ward is not a person who is aggrieved by a decree discharging him from his trust as guardian on the ground that his ward is no longer insane, within the meaning of Rev. Laws, c. 162, § 9, as to appeals, and as he has no right to appeal from the decree the costs of his appeal are not properly allowable in his account.—Ensign v. Faxon, Mass., 112 N. E. 948.

55. **Insolvency**—Preference.—A "preference" is the paying or securing to one or more of his creditors, by an insolvent debtor, the whole or a part of their claims, to the exclusion of the rest.—Citizens' State Bank of Chautauqua v. First Nat. Bank of Sedan, Kan., 157 Pac. 392.

56.——Where insurance company reinstates canceled policy after knowledge of breach prior to reinstatement has been brought home to local issuing agent, forfeitures are waived.—Home Ins. Co. of New York v. Mobley, Okla., 157 Pac. 324.

57. **Insurance**—Agency. — Where a policy written and issued by an agent with power to represent the company does not correctly describe the property and insured has not concealed or misrepresented any fact, the misdescription does not render the policy void.—Dodge v. Grain Shippers' Mut. Fire Ins. Ass'n, Ia., 157 N. W. 955.

58.——Fixtures.—Fire policy covering printing presses, etc., and such other merchandise, furniture and "fixtures" as are usually kept and used in printing office covers linotype machine.—Review Printing Co. v. Hartford Fire Ins. Co., Minn., 158 N. W. 39.

59.——Indemnity.—Bond, indemnifying bank against dishonesty of 18 employes named in schedule attached, held, in legal effect, a separate bond as to each employe, so that bank could not recover for loss which must have been caused by one of three employes, particular dishonest employe not being determined.—American Sav. Bank & Trust Co. v. National Surety Co., Wash., 157 Pac. 877.

60.——Material Representation.—Where insurer required applicant for health and accident policy to state whether he had suffered from diseases of the eyes, answers to such questions are material.—Poorter v. General Acc., Fire & Life Assur. Corp., Cal., 157 Pac. 825.

61.——Place of Contract.—Where insured received his policy in California upon payment therein of the first year's premium in advance, the last act essential to consummation of the contract being done in California, the contract was made there.—Flittner v. Equitable Life Assur. Soc. of the United States, Cal., 157 Pac. 630.

62.——Proximate Cause.—Death from traumatic peritonitis, or inflammation of the peritoneum, caused by blow on abdomen, was not proximately caused by disease within accident policy.—Hickey v. Ministers' Casualty Union, Minn., 158 N. W. 45.

63. **Intoxicating Liquors**—Evidence. — In a prosecution for persistent violation of the prohibitory law, evidence that liquor was ordered by persons other than defendant and directed to be hauled to the barn of defendant's father, together with evidence that some of this liquor was taken from the barn to defendant's house under defendant's direction and there sold by him, was properly admitted.—State v. Patterson, Kan., 157 Pac. 437.

64.——Licenses.—Where the city council was required to examine applications for liquor licenses and investigate the propriety of granting them, its functions were sufficiently judicial to be reviewed by certiorari.—Rigdon v. Common Council of City of San Diego, Cal., 157 Pac. 513.

65.——Remonstrance.—Under St. 1915, § 1548, subd. 5, touching parents' remonstrance to granting of liquor license for premises within 300 feet of school, act of parent in signing remonstrance is irrevocable, and parents who have signed cannot withdraw their names, after the remonstrance has taken effect by being filed.—State v. Wolf, Wis., 158 N. W. 78.

66. **Libel and Slander**—Libel per se.—A published notice to look out for plaintiffs whenever

they wished to buy stock, as they had misrepresented to defendant the market price and the place to which they shipped, was libelous per se, as it was an imputation of business dishonesty.—Cole v. Christenson, Wis., 158 N. W. 56.

67.——Libel per se.—Words falsely charging plaintiff with hunting deer unlawfully are libelous per se; it being a crime under St. 1913, § 4562d, to so hunt deer.—Mallon v. Tonn, Wis., 157 N. W. 1098.

68. **Landlord and Tenant**—Lodger.—Where a house is under the direct control and supervision of the owners, rooms are furnished and attended to by them, and they retain the keys, although the word "apartment" appears as a portion of the designation of the premises, a person renting a room therein becomes a lodger and not a tenant.—Fox v. Windemere Hotel Apartment Co., Cal., 157 Pac. 820.

69. **Libel and Slander**—Privileged Communication.—Although communications to agents employed to detect the author of a theft may be privileged, the principal is liable if he makes similar communications to them in the hearing and presence of another individual not so employed if the statements are slanderous.—Fowlie v. Cruse, Mont., 157 Pac. 958.

70. **Mandamus**—Discretion.—While mandamus may lie to compel members of town board to repair public road when they refuse to exercise discretion, or when they perform duty in arbitrary or capricious manner, clear right to relief must be shown.—Olson v. Honett, Minn., 157 N. W. 1092.

71.——Official Acts.—Mandamus does not lie to compel county treasurer to comply with order of county commissioners compromising claim for taxes in absence of showing, in record of proceedings or board or by suit of taxpayer, of ground for compromise.—D. S. B. Johnston Land Co. v. Convis, N. D., 157 N. W. 980.

72. **Master and Servant**—Assumption of Risk.—Under federal Employers' Liability Act, employe does not assume risk of negligence of fellow-servant.—Thompson v. Minneapolis & St. L. R. Co., Minn., 158 N. W. 42.

73.——Assumption of Risk.—Railroad held not liable for injury to workman driving spike in tie, while standing on pile of loose dirt, resulting from face of hammer, worn slick, slipping and striking tie, spraining workman's back.—Morris v. Carolina, C. & O. Ry., N. C., 88 S. E. 818.

74.——Respondeat Superior.—Where his son was driving his automobile within his general scope as chauffeur for him, defendant, notwithstanding the son's disregard of directions, would be liable for damages for his negligent collision with plaintiff's truck.—House v. Fry, Cal., 157 Pac. 500.

75.——Respondeat Superior.—Where a master employed a physician to care for men injured in his employ, in logging operations, it not being contended that he did not exercise ordinary care in the selection, held that the master was not liable for malpractice of the physician.—Engirbritson v. Tri-State Cedar Co., Wash., 157 Pac. 677.

76.——Workmen's Compensation Act.—Under Workmen's Compensation Law, §§ 2394—7 and 2394—3, held that a village night marshal injured in the course of his employment as night policeman in attempting to prevent a violation of the state speed laws was an employe within the meaning of the act.—Village of Kiel v. Industrial Commission of Wisconsin, Wis., 158 N. W. 68.

77.——Workmen's Compensation Act.—Delivery boy, returning from lunch at home, and catching on rear end of truck while riding bicycle, held to have received personal injury arising out of and in course of employment within Workmen's Compensation Act, pt. 2, § 1.—Beaudry v. Watkins, Mich., 158 N. W. 16.

78.——Workmen's Compensation Act.—Under Workmen's Compensation Act employe who as result of injury to fingers cannot tightly close them, and is rendered less able to work is "partially incapacitated."—Gailey v. Pet Bros. Mfg. Co., Kan., 157 Pac. 431.

79.——Workmen's Compensation Act.—Employe partially incapacitated by injury from performing labor does not lose right to compensation under Workmen's Compensation Act by remaining in employment at former wages.—Gailey v. Peet Bros. Mfg. Co., Kan., 157 Pac. 431.

80.——Workmen's Compensation Act.—Recovery under the Workmen's Compensation Act cannot be augmented by the fact that disabling effects of the injury are increased by incompetent or negligent surgical treatment for which the employer is responsible.—Ruth v. Witherspoon-Englar Co., Kan., 157 Pac. 403.

81. **Mortgages**—Foreclosure.—Mortgagee who foreclosed by advertisement, but on account of mistake commenced action to foreclose, treating former foreclosure as a nullity, cannot within two months after beginning of such action obtain sheriff's deed under prior foreclosure, and by such deed and action to quiet title deprive mortgagor and subsequent incumbrancers of right to redeem.—State Bank of Maxbass v. Hileman, N. D., 157 N. W. 971.

82.——Foreclosure.—Where after sale under trust deed, but before conveyance, third person pays trustee amount of debt and receives deed in place of purchaser at sale, on terms that debtor may redeem by paying amount so advanced within stipulated time, such deed will be considered as mortgage.—Harvey v. Shipe, W. Va., 88 S. E. 830.

83. **Municipal Corporations**—The affidavit of one of the commissioners, in sewer easement proceedings, as to the awards and assessments which he supposed the commission, of which he was a member, would ultimately announce, is without legal force or effect.—In re Pugsley Ave. in City of New York, N. Y., 112 N. E. 918.

84.——Civil Service. — Municipal employes under civil service cannot be ousted by ordinance abolishing their positions and creating new positions with substantially similar duties.—Barry v. Jackson, Cal., 157 Pac. 828.

85.——Liberty.—Liberty as applied to the use of a public street means freedom regulated by law.—Kelly v. James, S. D., 157 N. W. 990.

86.——Negligence.—A depression extending across a street at right angles, 7 or 8 inches deep, regularly sloping at sides, and about 12 feet wide, held not to charge city with negligence and liability for accident to driver of team.—Keen v. City of Mitchell, S. D., 157 N. W. 1049.

87.——Ordinance. — Provision of ordinance making it unlawful to deposit refuse or allow it to remain on lots, not distinguishing between nocuous and innocuous deposits, or prescribing time, is beyond authority conferred on cities of second class to secure general health and prevent and remove nuisances.—City of Goodland v. Popejoy, Kan., 157 Pac. 410.

88.——Ordinance.—When an ordinance requiring drivers of vehicles moving slowly to keep as close as possible to the right curb, a motor truck going at 18 miles per hour, when the speed limit was 20 miles, was not moving "slowly."—House v. Fry, Cal., 157 Pac. 500.

89. **Negligence**—Contributory Negligence. — Person passing across lot on very dark night, after opportunity to observe evacuation in daytime, was guilty of contributory negligence, barring recovery from injuries.—Costello v. Farmers' Bank of Golden Valley, S. D., 157 N. W. 982.

90.——Ultimate Purchaser.—The manufacturer of shoes who uses nails in the soles in such a manner as to make them appear to be "sewed soles" is not liable to one who purchases them from a retailer and is injured by having a nail penetrate his foot.—Kerwin v. Chippewa Shoe Mfg. Co., Wis., 157 N. W. 1101.

91. **Novation**—Promise.—Where the corporation secretary wrote a letter, not under seal, to plaintiff, seeking adjustment of their account, and included a statement that it was "attending to" obligations of another firm, which it had taken over, and "expected to take care" of plaintiff's claim, such writing was not a promise to assume and pay such other firm's debts.—Guernsey v. Johnson Organ & Piano Mfg. Co., Cal., 157 Pac. 527.

92. **Parent and Child** — Emancipation. — Where father informs minor son that he must do for himself, permits him to remain away from home for more than a year, and son suffers injuries and notifies father, but receives no offer of assistance, son may recover loss

due to impairment of earning capacity prior to majority.—Harris Irby Cotton Co. v. Duncan, Okla., 157 Pac. 746.

93.——Negligence.—Under Rev. St. 1913, § 3048, owner who permits child under 16 to operate automobile, is guilty of negligence and is liable therefor when other elements of actionable negligence are present.—Walker v. Klopp, Neb., 157 N. W. 962.

94. **Payment**—Mistake.—Action will not lie to recover money paid under mistake or in ignorance of law, where payment is made voluntarily, with full knowledge of facts, not induced by fraud or improper conduct, but in satisfaction of moral obligation or contingent liability.—Jacobson v. Mohall Telephone Co., N. D., 157 N. W. 1033.

95. **Perpetuities**—Devise. — An appointment by devise to several for life, at death of survivor the income to accumulate and to be paid to grandnephews and grandnieces, if any, then living, at their attaining 21, with remainder over, where life tenants were living at death of both testatrix and donor of power, and a grandnephew and grandniece were living at death of last life tenant, is not a violation of the rule against perpetuities.—Dexter v. Attorney General, Mass., 112 N. E. 946.

96. **Physicians and Surgeons**—Compensation. —A surgeon, who operated for goiter, cannot, though the patient died, be deprived **of compensation**, because he did not take a blood test of the patient; it not appearing that the failure injured the patient.—Harvey v. Richardson, Wash., 157 Pac. 674.

97. **Railroads**—Safety Appliance.—A coupler which will not couple by impact, unless the knuckles have been opened by hand, is not such as is contemplated by the federal Safety Appliance Act.—Hurley v. Illinois Cent. R. Co., Minn., 157 N. W. 1005.

98.——Setting Out Fire.—In an action for injury to property by fire from railroad locomotive, evidence of setting fire by the engine on the same trip a short time prior to the fire complained of was competent, as tending to show defective condition or construction, or improper management.—Stoddard v. Grand Trunk Western Ry. Co., Mich., 158 N. W. 7.

99. **Sales**—Acceptance.—A buyer, discovering that there were goods in a carload of furniture not included in his order, might accept the goods ordered and reject the balance, reject all the goods, or accept all.—Cuschner v. Pittsburgh-Hickson Co., Wash., 157 Pac. 879.

100.——Opinion.—Where the buyer is ignorant of the value of the property, to the knowledge of the seller, representations as to value are not mere expressions of opinions.—Merchants' Nat. Bank of Massillon, Ohio, v. Nees, Ind., 112 N. E. 904.

101.——Rescission.—Where plaintiff for more than a month after learning that an automobile purchased by him was not in running order, as warranted by the vendor, made no tender or offer to return the automobile, other than to express a willingness or a proposal to return it, he could not recover as on a rescission of the contract.—Collins v. Skillings, Mass., 112 N. E. 938.

102.——Rescission.—Defendant's action, in taking off parts of an automobile to be used as exhibits at the trial without the consent of plaintiff, held not to be acts of ownership so inconsistent that his claim that he was holding it subject to plaintiff's order as to preclude him from asserting his right to rescind.—United Motor San Francisco Co. v. Callander, Cal., 157 Pac. 561.

103. **Specific Performance**—Equity.—A surrender clause of an oil and gas lease giving the lessee an option to terminate the lease at any time, deprives the lessee of the right to specific performance until it has performed the contract or placed itself in a position that it may be compelled to perform same.—Hill Oil & Gas Co. v. White, Okla., 157 Pac. 710.

104.——Parties to Actions.—Buyer of lands could not have specific performance against owners of the two tracts where the one who signed contract to sell owned only one of the tracts; the other owner not having become a party to the contract.—McLennan v. Church, Wis., 158 N. W. 73.

105.——Tender.—Where defendant agreed to buy land of plaintiff and make payment on March 1, 1914, on such date plaintiff could make tender of performance on his part, keep the tender good, demand the purchase money, and sue for specific performance.—Miller v. McConnel, Ia., 157 N. W. 943.

106. **Statutes**—Sufficiency of Title.—Since the essential requirement is notice, a title is sufficient if it gives reasonable notice of the subject legislated upon, and need not be an index to the body thereof, nor express in detail every phase of the subject dealt with by the act.—Davis-Kaser Co. v. Colonial Fire Underwriters' Ins. Co. (Agency) of Hartford, Conn., Wash., 157 Pac. 870.

107. **Subrogation**—Volunteer.—Where a mortgage could not be foreclosed, because the mortgagor had died before it was made by his agent, acting under power of attorney, the mortgagee was not entitled to subrogation to the extent that the money obtained on the mortgage was used in discharging liens against the property, as subrogation is not extended to money advanced by a volunteer or stranger.—Wagner v. Alderson, Wash., 157 Pac. 476.

108. **Taxation**—Parties to Action.—Tax ferret has no such interest in proceeding to discover property not listed and assessed for taxation as to authorize him to appeal from final order of county treasurer to county court, or from county court to supreme court.—In re Boston Store, Okla., 157 Pac. 746.

109. **Trade-Marks and Trade-Names**—Unfair Competition.—Defendant company's use of the name of the inventor of its patents, indicating that it was a new company, from that which formerly manufactured under such patents, held not unfair competition warranting injunctive relief.—Deister Concentrator Co. v. Deister Mach. Co., Ind., 112 N. E. 906.

110. **Waters and Water Courses**—Boundaries. —Generally meander lines on margin of nonnavigable lakes or ponds are not intended as boundaries, but are run to determine quantity for which purchaser must pay.—Brignall v. Hannah, N. D., 157 N. W. 1042.

111. **Wills**—Estoppel.—Plaintiff charged with knowledge of his legal rights and with knowledge of his grandmother's unsoundness of mind when she executed her will, and who elected to accept compensation for the legacy given him by the will, held estopped to deny the validity of the will without first restoring the benefits received.—Hight v. Carr, Ind., 112 N. E. 881.

112.——Perpetuity.—In a will devising a life estate to several, on death of last survivor to accumulate to be paid to grandnephews and grandnieces, if any "who may then be living," when they attain 21 years, the words "then living," refer to grandnephews and grandnieces alive at death of last survivor and are descriptive of class who are to take, and are not used as defining time when they should come into enjoyment of property.—Dexter v. Attorney General, Mass., 112 N. E. 946.

113.——Publication.—"Publication," as used in law of wills, is act by which testator manifests intention to give effect to paper as his last will and testament.—In re Spier's Estate, Neb., 157 N. W. 1014.

114. **Work and Labor**—Infant.—A minor was not bound by his contract to render services for eight years, and the reasonableness of verdict in his suit on quantum meruit for three years' services was to be determined by proof of the value of the services rendered, and not by what he had agreed to receive for eight years.—Fehlhafer v. Reiners, S. D., 157 N. W. 1058.

115. **Vendor and Purchaser**—Condition Precedent.—Where vendee fails to perform conditions preecdent in contract for purchase of land, vendor may rescind without tendering deed, and if deed has been placed in escrow, tender need not be made.—Papesch v. Wagnon, Idaho, 157 Pac. 775.

116.——Fraud.—Representation by agent of seller that he had inside information that capitol would be located within a few blocks of lots was merely expression of opinion, not constituting fraud.—Ames v. Milam, Okla., 157 Pac. 941.

117.——Notice.—Where plaintiff was in possession of land, defendant purchasing, knowing plaintiff had bought it or was claiming under some agreement with defendant's vendors, in whom the record title did not then appear, was chargeable with notice of plaintiff's rights.—Church v. McLennan, Wis., 158 N. W. 89.